

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>EDMUND D. THORNTON,</b>	)	
<b>Petitioner,</b>	)	<b>C.A. No. 23-154 Erie</b>
	)	
<b>v.</b>	)	<b>District Judge Susan Paradise Baxter</b>
	)	<b>Magistrate Judge Richard A. Lanzillo</b>
<b>DISTRICT ATTORNEY OF MCKEAN</b>	)	
<b>COUNTY, et al.,</b>	)	
<b>Respondents.</b>	)	

## MEMORANDUM ORDER

Petitioner Edmund D. Thornton initiated this *pro se* action on May 19, 2023, by filing a document entitled “Appeal” without referring to any basis for federal jurisdiction. [ECF No. 1]. Petitioner asserts that he filed a pleading in the “McKean County Court” on March 1, 2023, requesting that his underlying criminal case at “CR 300-1998” be reopened based upon a claim of jury tampering (Id. at p. 1). Petitioner asserts further that the state court “intentionally misrepresent[ed]” his pleading as a PCRA petition “to establish a basis for dismissal,” and is, therefore, filing “[t]his appeal ... simultaneously in state and federal courts as more persuasive to merit of claim.” (Id. at p. 2). The Clerk of Courts construed Petitioner’s document as a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 and docketed it accordingly. The petition was then referred to Chief United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Because Petitioner did not pay the filing fee or move for leave to proceed *in forma pauperis*, Judge Lanzillo issued an Order administratively closing this action and required Petitioner to refile his petition using the standard form for 2254 petitions. [ECF No. 5].

Thereafter, Petitioner filed a response clarifying that he "did not file a Petition for Writ of Habeas Corpus" but rather "crossfiled appeals in the PA Superior Court (still open) and the U.S. Western District." [ECF No. 6]. Based on this representation, Judge Lanzillo appropriately construed Petitioner's pleading as an appeal of a state court judgment directly to this Court.

Accordingly, on November 3, 2023, Judge Lanzillo issued a Report and Recommendation ("R&R") recommending that the petition be dismissed, without service and with prejudice, for lack of jurisdiction, because only the United States Supreme Court, and not the lower federal courts, has jurisdiction to review a state court decision. [ECF No. 8]. The R&R recommends further that a Certificate of Appealability be denied. (*Id.*). Objections to the R&R were due to be filed by November 20, 2023; however, no objections have been received from Petitioner.

Thus, after *de novo* review of the petition and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 12th day of December, 2023,

IT IS HEREBY ORDERED that the within petition, docketed as a petition for a writ of habeas corpus, is DISMISSED, without service and with prejudice, and that a Certificate of Appealability is DENIED. The report and recommendation of Chief Magistrate Judge Lanzillo, dated November 3, 2023 [ECF No. 8], is adopted as the opinion of this Court. As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
Chief United States Magistrate Judge

All parties of record